

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

Indianapolis, IN

KR DRENTH TRUCKING, INC.
d/b/a TK SERVICES, INC.,¹
Employer

and

Case 25-RC-10328

TEAMSTERS LOCAL 135, a/w INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on February 13, 2006, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.²

I. ISSUES

Teamsters Local 135, a/w the International Brotherhood of Teamsters (herein referred to as the “Petitioner” or the “Union”) seeks an election in a unit comprised of the approximately 42-44 drivers employed by KR Drenth Trucking, Inc. d/b/a TK Services, Inc. (herein referred to as the “Employer”) at its Indiana facilities. The Employer does not dispute the inclusion of all its Indiana facilities in the unit, but asserts that any appropriate unit must also include operators and mechanics, as they are under centralized labor relations policies, report to the same supervisor,

¹ The name of the Employer appears as stipulated by the parties.

² Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer’s rulings made at the hearing are free from error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

and share a community of interest with the petitioned-for unit members. The Petitioner asserts that a unit comprised of only drivers is an appropriate unit.

II. DECISION

For the reasons discussed in detail below and contrary to the Employer, the evidence failed to demonstrate a strong community of interest which requires the inclusion of mechanics and operators in the petitioned-for unit. Additionally, since the mechanics and operators are excluded, I conclude that the tire changer and truck washer are also excluded because of their close alignment with the mechanics; and such exclusions of the tire changer and truck washer do not form a residual group. Therefore, I conclude that the petitioned-for unit is an appropriate unit.

The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time drivers employed by the Employer at its Indiana facilities; BUT EXCLUDING all operators, mechanics, tire changers, tire washers, clerical employees, guards and supervisors as defined in the Act, and all other employees.

The unit found appropriate herein consists of approximately 42-44 employees for whom no history of collective bargaining exists.

III. STATEMENT OF FACTS

A. Overview of Operations

The Employer performs contract waste hauling services for Republic Waste. The employees of Republic Waste collect waste from various customers throughout various areas and dump it at one of nine transfer stations. The transfer stations are located in Kokomo, Anderson, Indianapolis (96th Street and Circle City Recycling), Bloomington, Bedford, Greencastle, Vincennes, and Jasper. Depending on the transfer station, Republic Waste employees and/or the Employer's employees, push the waste back and subsequently load the Employer's semi trucks. The Employer's drivers then transport the waste from the transfer stations to various landfills. The Employer also operates a mechanics shop in Indianapolis at the Circle City Recycling Transfer Station. In addition, the Employer leases space in Terre Haute from Republic Waste to operate a mechanics shop which services the trucks operating out of the Employer's Greencastle, Bloomington, Bedford, and Vincennes locations.

The Employer's owners, Kenny Drenth and another individual named Manski, are located in Chicago. They determine employees' wages and benefits. All employees receive the same benefits which include holidays. The Employer pays the initial startup cost for all employees who choose to wear uniforms. The record does not disclose any other specific benefits. The owners determine whether employees receive pay increases or safety bonuses, although the record does not reflect specifics regarding such increases or bonuses in the past.

The Employer maintains one seniority list for drivers, operators and mechanics, but the record is devoid of any evidence regarding when and how seniority is utilized.

In addition to the centralized labor relations, Joe Bergeron, the manager of Indiana, oversees all of the work sites. Bergeron reports directly to the owners. His principle office is located at the 96th Street Transfer Station. While Bergeron has an almost daily presence at the 96th Street and Circle City Recycling transfer stations, he monitors the other sites by speaking directly with employees on a daily basis and conducts site visits. The record revealed that Bergeron typically visits Bloomington once a month; Bedford every other month; Greencastle once a year; Vincennes twice a year; Jasper once a year, Terre Haute approximately 24 times a year, Anderson about once a week, and Kokomo about three or four times³. The record does not indicate how often Bergeron visits the other locations. Bergeron supervises all of the employees working at and out of the Employer's transfer stations. The uncontradicted evidence adduced at the hearing established that Bergeron has the authority to hire, fire, transfer, grant or deny leave requests, discipline, make assignments, and evaluate employees. For instance, prior to hiring a potential driver, Bergeron would review the driver's road test and motor vehicle report. He would conduct an interview either in person or by phone. Bergeron would then decide whether to hire the applicant. Based on this record evidence, I find that Bergeron is a supervisor as defined by Section 2(11) of the Act.

Bergeron supervises approximately 60-62 employees, which include about 42-44 drivers, nine operators, seven mechanics, a tire changer, and a truck washer. There is one driver in Kokomo; three drivers in Anderson; 14 drivers and three operators at 96th Street; 10 drivers, three operators, five mechanics, a tire changer and a truck washer at Circle City Recycling; eight drivers and two operators in Bloomington; one or two drivers in Bedford; two drivers and one operator in Vincennes; one or two drivers in Greencastle; two drivers in Jasper; and two mechanics in Terre Haute.

B. Drivers

The drivers utilize 18-wheelers (also referred to as semi-trucks or tractor-trailers) to haul trash from the different transfer stations to landfills. They must possess a commercial driver's license (referred to as a "CDL") and pass a road test administered by a current driver. As part of their training, the drivers must also view a movie. The record does not describe any other aspects of the drivers' training. The drivers are required to attend a monthly drivers-only meeting, however, the record does not state the purpose for the meetings. Although the drivers are not required to wear uniforms, they may elect to do so. These uniforms are gray as are the uniforms operators may elect to wear. The mechanics wear blue uniforms. If they elect to wear uniforms, the drivers are responsible for paying a weekly fee for them. The drivers are required to maintain drivers' logs, which are used to track their loads. Drivers are expected to haul at least three loads per day. Drivers are paid a starting wage of \$67.00 per load for hauling waste to the landfill. They do not receive overtime pay.

³ The record indicates that the Kokomo location recently opened, although there is no indication as to when.

The record contains general testimony that the drivers spend the majority of the day on the road. The record, however, is not specific as to the number of hours drivers spend hauling waste to the landfill. According to the Employer, some drivers may spend about 5% or less of their time voluntarily performing work as an operator piling waste or loading semi-trucks either during the week and/or on Saturdays. The Employer concedes that by allowing drivers to work as operators on Saturdays it alleviates the need to pay operators overtime, it allows operators time off, and the drivers sometime desire a change.

Based on the testimony of Manager Bergeron⁴ it appears that at the Circle City Recycling Transfer Station, three of the 10 drivers have performed operators' duties, ranging from 75 to 200 hours each per year. At the 96th Street Transfer Station, three of the 14 drivers have performed operators' work between 15 to 100 hours each per year. At the Bloomington Transfer Station, two of the eight drivers performed operators' work about 30 hours and 75 hours per year, respectively. At the Jasper Transfer Station, as part of their normal job duties, the drivers load their own trucks. In Vincennes, at least one driver performed operators' work for about 25 to 30 hours per year. At the Greencastle Transfer Station, the record indicates that while the drivers occasionally perform operators work it is only if they need to leave and a Republic employee is not there. Additionally, the Greencastle driver does not put the operator type work performed on this time sheet and is not paid for the work. At the Kokomo, Anderson, and Bedford transfer stations, there is no evidence to establish that the drivers at any time perform work as operators. Notably, Republic Waste employees load the Employer's trucks in Kokomo, Anderson and Greencastle, and the City of Bedford employees load in Bedford. When a driver is functioning as an operator, the driver is paid \$16.00 per hour.

As well as performing operators' work, the evidence revealed that drivers may also change their own tires. The record, however, does not contain specific evidence as to how often drivers engage in that type of work.

C. Operators

The Employer has operators at the 96th Street, Circle City, Bloomington, and Vincennes transfer stations. The operators use pay loaders (also referred to as the front end loaders and wheel loaders) to push waste at the transfer stations into a pile and to load the drivers' semi-trucks. The operators communicate with the drivers pertaining to the loading via CB or by physically bumping up against the trucks with the pay loaders. The communication may include "back up", "pull forward", and/or "good to go". Although the evidence revealed that at least one operator has a CDL, the operators are not required to have it. The evidence disclosed that operators never perform the duties of the drivers. The operators' training includes watching the same movie as the drivers. The operators attend regular meetings with the mechanics, the tire changer, and the truck washer. The record does not state the purpose of the meetings. The operators are not required to wear uniforms but may elect to wear the same gray uniforms as the

⁴ The Employer attached to its brief documents purportedly exhibiting the fact that drivers perform work on Saturday or in the evening at certain sites. These documents were not entered into evidence at the hearing. Therefore, as there was no opportunity for the parties to elicit testimony regarding these documents they shall be given no weight in this decision.

drivers. If the operators make such an election, they must then pay a weekly fee for the uniforms. The operators punch a time clock and are paid \$16.00 per hour. The operators are eligible for overtime pay.

The record contains general testimony that the operators spend the majority of the day at the transfer stations. At the 96th Street Transfer Station, the operators work three shifts: 3:00 a.m. to 12:00 p.m., 12:00 p.m. to 9:00 p.m., and 5:00 a.m. to 4:00 p.m. or 5:00 p.m. At the Circle City Recycling Transfer Station, the operators work three shifts from 4:00 a.m. to 12:00 p.m., 12:00 p.m. to 8:30 p.m., and 5:00 a.m. to 4 or 5 p.m. At the Bloomington Transfer Station, the employees work two shifts: 6:00 a.m. to 6:00 p.m. and 8:00 a.m. or 9:00 a.m. to 6:00 p.m. It is not clear what hours the Employer's operator works at the Vincennes transfer station. The evidence does not indicate whether drivers and operators work the same shift.

D. Mechanics

The mechanics perform maintenance work on the trucks and pay loaders such as preventative maintenance, changing tires, and welding on the trailers. At the Circle City Recycling Transfer Station, there are four full-time mechanics and one part-time mechanic. The other two mechanics work at the mechanic shop in Terre Haute. The mechanics communicate with drivers and operators primarily regarding the repair of equipment. The evidence disclosed that mechanics do not perform the duties of the drivers. The mechanics only drive the tractor trailers in the parking lots and respond to roadside service calls. The record, however, does not disclose the mechanics' training or the type of tools they utilize on a daily basis. The record does reveal that although some mechanics have a CDL they are not required to possess such a license. The mechanics wear a blue uniform and must pay a weekly fee for the uniforms. The evidence is unclear on whether the mechanics are required to wear the uniforms. The mechanics punch a time clock. They are paid between \$12.00 per hour and \$20.00 per hour. The evidence does not reveal the determining factors that distinguish their pay. The tire changer and truck washer also work at the Circle City Recycling Transfer Station. The tire changer is responsible for changing tires which consists of dismounting, patching, and remounting tires. At times, he has to go out into the field for service calls. The tire changer works 40 hours per week and is paid between \$8.00 per hour and \$12.00 per hour. The truck washer is responsible for washing the trucks, sweeping the floor, and washing the parts room and office. He does not go out into the field. The truck washer works about 50 hours per week and is paid \$8.80 per hour.

IV. DISCUSSION

The Petitioner seeks to represent the drivers employed by the Employer and exclude all other employees. The Employer contends that the operators and mechanics share a community of interest with the drivers and therefore must be included in the petitioned-for unit. The issue in this case is whether the operators and mechanics share such a substantial community of interest with the drivers as to require their inclusion in the unit found appropriate.

The Act allows a union to petition for an appropriate unit. This does not necessarily mean that the unit will be the most appropriate or that there might not be others more

appropriate. J.C. Penney Company, Inc., 328 NLRB 766 (1999); The Phoenician, 308 NLRB 826 (1992). In determining an appropriate unit, the ultimate question is whether the employees share a sufficient community of interest to require their joinder within one unit. J.C. Penney Company, Inc., supra; The Phoenician, supra; Alley Drywall, Inc., 333 NLRB 1005 (2001) citing Alois Box Co., 326 NLRB 1177 (1998); Washington Palm, Inc., 314 NLRB 1122, 1127 (1994). In making such a determination the Board weighs a variety of factors, including similarities in wages or method of compensation; similar hours of work; similar employment benefits; similar supervision; the degree of similar or dissimilar qualifications, training, and skills; similarities in job functions; the amount of working time spent away from the facility; the integration of work functions; the degree of interchange between employees as well as the degree of employee contact; and the history of bargaining. NLRB v. Action Automotive, Inc., 469 U.S. 490, 494-97; Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962). The Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. Overnite Transportation Company, 331 NLRB 662, 663 (2000). If the petitioned-for unit is not an appropriate unit, the Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for unit. Bartlett Collins Company, 334 NLRB 484 (2001) and cases cited therein.

The Employer contends that the drivers share a substantial community of interest with the operators and mechanics and thus the appropriate unit should consist of all three groups. The Employer asserts that the drivers share the same supervision, integrate and interchange with the work functions of the other employees, have similar work hours and benefits, and are governed by centralized labor relations policies.

Shared supervision is one of many community of interest factors the Board examines but it is not necessarily determinative of unit determination. See Mc-MorHan Trucking Co., 166 NLRB 700, 701 (1967). Although the manager supervises all employees, it appears that the employees are generally autonomous. The evidence revealed that Bergeron, manager of Indiana, does not visit the sites often and merely communicates with employees by telephone. Similarly, the employees appear to have little contact with each other. Even though the drivers and operators are trained by the Employer to load waste at the transfer stations, the operators work only at the transfer stations and have contact with the drivers only during that process. Operators engage in minimal conversation with the drivers while loading, which consist of basic commands and instructions. The record does not reveal how long the loading process takes; however, the drivers' goal is to make at least three runs per day. Nevertheless, the evidence establishes that the drivers and operators have minimal daily contact with each other.

The record also reveals that the mechanics have very little contact with the drivers. The mechanics work primarily out of the mechanic shops and may respond to a driver's service call on the road. The record discloses that the drivers' communication with the mechanics is limited to drivers calling to report service problems or bringing trucks to the shop for service/inspection. Overall, the evidence supports a finding that the drivers have little contact with the operators and mechanics. However, drivers also have little contact with each other. Therefore, this factor alone can not negate a community of interest. See Airco, Inc., 273 NLRB 348, 349 (1984).

Other factors militate against requiring the operators and mechanics inclusion in the unit. The drivers' pay differs from the operators and mechanics. Operators and mechanics are paid per hour; while drivers are paid by the load. With regards to interchange, the record discloses that drivers substitute for operators on Saturdays and at times perform duties of the operators during the week. The record establishes that the amount of time drivers perform operator type work is *de minimis*, amounting to less than an hour a week in some cases. The evidence further reveals that the small percentage of drivers who perform operators work do so voluntarily and for the benefit of the Employer. Such infrequent and voluntary temporary interchange is not significant. See Overnite Transportation, 331 NLRB 662, 663 (2000); Red Lobster, 300 NLRB 908, 911 (1990). The record also demonstrates that drivers and mechanics both change tires. However, based on the evidence it appears that the mechanics are required to engage in more skilled work such as preventative maintenance. Other than changing tires, there is no evidence that drivers perform the same or similar types of mechanics' work on a regular basis. Moreover, the record is void of evidence that drivers perform or assist with any major mechanical work. In a like manner, the record revealed that operators and mechanics do not perform drivers' duties. It is highly unlikely that operators or mechanics perform the same type of driving because the record discloses that they are not required to have a CDL. The record specifically indicates that operators never perform the work of drivers. Although the evidence revealed that mechanics do drive the semi-trucks, this driving coincides with the mechanics performing repairs on the vehicles, not hauling waste. Overnite Transportation Company, 322 NLRB 347 (1996). As for evidence of permanent transfers between the Employer's three classifications, the record reveals that in the two years of operations the Employer has had one driver become an operator, one driver become a mechanic and one operator become a driver. This evidence, however, does not demonstrate any established line of promotion into or out of any of the three classifications.

Although the mechanics and drivers share common supervision, I find that the evidence of common duties, integration, and interchange are insubstantial. See Novato Disposal Services, Inc., 330 NLRB 632 (2000). Moreover, the Board has held that drivers comprise a functionally distinct group which may constitute a separate appropriate unit when, as here, the Union seeks to represent them separately, there is no bargaining history, and no other labor organization seeks to represent them in a broader unit. Mc-Mor-Han Trucking, Co., Inc., 166 NLRB 700 (1967). I find that the evidence is insufficient to require that the operators and mechanics be included in the petitioned-for unit of drivers. It appears that the tire changers and truck washer are closely aligned to the mechanics and thus should also be excluded from the petitioned-for unit.

In support of its contention that mechanics and operators should be included in a unit with the drivers, the Employer cites Vincent M. Ippolito, Inc. and Bergen Enterprises Co., 313 NLRB 715 (1994). The Employer's reliance on that case is misplaced. In Vincent M. Ippolito, the Board found that the employer's mechanics at a waste transfer station would not constitute a separate unit for purposes of collective bargaining. The Board did not, however, find that the mechanics should be included in a unit with the employer's drivers, as they were already represented in a separate unit with helper lifters.

Based on the foregoing and the record evidence, it is concluded that the petitioned for unit of the Employer's drivers is an appropriate unit for the purposes of collective bargaining.

IV. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the unit who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are former unit employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Teamsters Local 135, a/w the International Brotherhood of Teamsters.

V. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VI. LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 25's Office, Room 238, Minton-Capehart Federal Building,

575 North Pennsylvania Street, Indianapolis, Indiana 46204-1577, on or before **March 22, 1006**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570. This request must be received by the Board in Washington by March 29, 2006.

SIGNED at Indianapolis, Indiana, this 15th day of March, 2006.

/s/ Rik Lineback

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